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CHARLES ELMO

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

BRINKERHOFF-FARIS TRUST & SAVINGS COMPANY,
Petitioner,

vs.

WALTER O. HILL, Treasurer and ex-Officio Collector of Henry County, Missouri,
Respondent.

No. 464.

PETITION FOR REHEARING.

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477

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PETITION FOR REHEARING.

Comes now the above-named petitioner, the Brinkerhoff-Faris Trust and Savings Company, and presents this, its petition for a rehearing of the above-entitled cause, and in support thereof respectfully shows:

I.

The decision of the Supreme Court of Missouri, in effect, required the petitioner to appeal to a tribunal which had no power or jurisdiction to lower the petitioner's assess-

ment to the level of other assessments, but only had power to assess the property which was wholly omitted from assessment, and to raise the assessment of the under-assessed property to full value. The statutes conferring powers upon the State Tax Commission and the State Board of Equalization are quoted in petitioner's brief on pages 15 and 16.

In Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, l. c. 445 and 446, your Honors held that such a remedy is no remedy at all and that such a decision is to deny the injured taxpayer any remedy at all, because it is impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of under-assessed property in the taxing district, and that the right of a taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of the statute.

This is particularly true in view of petitioner's admission in its original return for taxation and in view of the allegations of its bill that its property is assessed at its true value (Tr., pp. 4, 5, 7).

II.

The decision of the Supreme Court of Missouri that the petitioner could not get relief from an intentionally discriminatory assessment in a court of equity left the peti-

tioner without any court, tribunal or administrative body competent to pass upon the validity of a fraudulently discriminatory tax and was therefore a denial to the petitioner of due process of law. Petitioner's property rights are involved. There is no place provided in the whole scheme of assessing, levying or collecting the tax where the plaintiff can be heard excepting in a court of equity.

Boonville National Bank v. Schlotzhauer, 317 Mo. 1298, l. c. 1313.

The County Board of Equalization had no power to grant relief to the petitioner. (See Opinion, p. 337.) There is no statute providing for an appeal to the State Board of Equalization. (See Opinion, p. 337.) The aggrieved taxpayer cannot pay his tax under protest and later recover the same (Robbins v. Latham, 134 Mo. 446). The aggrieved taxpayer cannot set up the defense of fraudulent discrimination as a defense in an action by the Collector to collect the tax.

State ex rel. v. Western Union Telegraph Co., 165 Mo. 502;
State ex rel. v. Johnson, 279 Mo. 228.

The State Tax Commission had no jurisdiction to grant any redress whatever.

Laclede Land & Imp. Co. v. State Tax Com., 295 Mo. 298.

After the assessment was made by the Assessor, after the State Board of Equalization had adopted that assessment, after the tax books had been made up and the tax bill had been issued and a suit had been brought thereon by the respondent, the Supreme Court of Missouri overruled the Laclede Land Company case, supra, and held that the State Tax Commission had ample jurisdiction to redress petitioner's grievances (see Opinion, p. 342), and that the petitioner was guilty of laches in not first appealing to the State Tax Commission (Opinion, p. 343), and therefore has no standing in a court of equity.

Such holding denies to petitioner due process of law.

III.

The question involved is one of great public importance to the citizens of Missouri. Practically every bank in Missouri is discriminated against as to the taxes of 1928 and 1929. Suits are pending all over the state and in the Supreme Court for relief from an intentionally discriminatory assessment. If the decision of the Supreme Court of Missouri in this cause is allowed to stand, then no such taxpayer has any remedy for the taxes of these two years, because the facts were made in all these cases and the time of appeal was long past before the Supreme Court of Missouri entered the final judgment in this cause. No attorney for any taxpayer would, prior to August 2, 1929, advise a client, aggrieved by an intentionally discriminatory assessment, to appeal to the State Tax Commission

in the face of a decision of the Supreme Court of Missouri made in 1922 (Laclede Land & Imp. Company case, supra), holding that it was "preposterous" and "unthinkable" for any person to conclude that the State Tax Commission had power to grant relief against a discriminatory tax.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the Court denying to petitioner the writ of certiorari be, upon further consideration, reversed.

Respectfully submitted,

ROY W. RUCKER,
JOHN MONTGOMERY, JR.,
LEE MONTGOMERY,
Counsel for Petitioner.

I, Roy W. Rucker, counsel for the above-named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Roy W. Rucker
Counsel for Petitioner.